

AMENDED IN SENATE APRIL 23, 2003

SENATE BILL

No. 841

Introduced by Senator Perata

February 21, 2003

~~An act to amend Section 1215.9 of the Insurance Code, relating to insurance holding companies. An act to amend Section 1861.02 of the Insurance Code, relating to automobile insurance, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 841, as amended, Perata. ~~Insurance: holding companies: injunctions~~ Automobile insurance: rates: persistency.

Existing law, as enacted by Proposition 103, requires rates and premiums for automobile insurance policies to be determined by the application of specified factors in decreasing order of importance, including the insured's driving record, the number of miles driven annually, and the number of years of driving experience, and allows the Insurance Commissioner to adopt additional factors by regulation that have a substantial relationship to the risk of loss. Existing law also provides that the absence of prior automobile insurance coverage, in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount Policy, or generally for automobile rates, premiums, or insurability.

This bill would allow an insurer to use persistency of automobile insurance coverage with that insurer, an affiliate, or another insurer as an optional rating factor. Because the bill would authorize the use of an additional factor in the determination of premiums for automobile insurance policies, it would amend Proposition 103 and would require a $\frac{2}{3}$ vote.

The bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law provides that whenever it appears to the commissioner that any insurer or other specified person has committed or is about to commit a violation of certain provisions of law or any rule, regulation, or order issued by the commissioner, the commissioner may apply to the superior court for the county in which the principal office of the insurer is located, or if the insurer has no principal office in this state, then to the Superior Court for the County of Los Angeles, or for the City and County of San Francisco, for an order enjoining that insurer or other person from doing so.~~

~~This bill would provide that if the insurer has no principal office in this state, the commissioner may, in addition, apply to the Superior Court for the County of Sacramento for an order enjoining the insurer.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. — Section 1215.9 of the Insurance Code is~~
- 2 *SECTION 1. Section 1861.02 of the Insurance Code is*
- 3 *amended to read:*
- 4 1861.02. (a) Rates and premiums for an automobile
- 5 insurance policy, as described in subdivision (a) of Section 660,
- 6 shall be determined by application of the following factors in
- 7 decreasing order of importance:
- 8 (1) The insured's driving safety record.
- 9 (2) The number of miles he or she drives annually.
- 10 (3) The number of years of driving experience the insured has
- 11 had.
- 12 (4) ~~Such~~ *Those* other factors ~~as~~ *that* the commissioner may
- 13 adopt by regulation *and* that have a substantial relationship to the
- 14 risk of loss. The regulations shall set forth the respective weight
- 15 to be given each factor in determining automobile rates and
- 16 premiums. Notwithstanding any other provision of law, the use of
- 17 any criterion without ~~such~~ approval shall constitute unfair
- 18 discrimination.
- 19 (b) (1) Every person who meets the criteria of Section
- 20 1861.025 shall be qualified to purchase a Good Driver Discount
- 21 policy from the insurer of his or her choice. An insurer shall not

1 refuse to offer and sell a Good Driver Discount policy to any
2 person who meets the standards of this subdivision.

3 (2) The rate charged for a Good Driver Discount policy shall
4 comply with subdivision (a) and shall be at least 20% below the
5 rate the insured would otherwise have been charged for the same
6 coverage. Rates for Good Driver Discount policies shall be
7 approved pursuant to this article.

8 (3) (A) This subdivision shall not prevent a reciprocal insurer,
9 organized prior to November 8, 1988, by a motor club holding a
10 certificate of authority under Chapter 2 (commencing with Section
11 12160) of Part 5 of Division 2, and which requires membership in
12 the motor club as a condition precedent to applying for insurance
13 from requiring membership in the motor club as a condition
14 precedent to obtaining insurance described in this subdivision.

15 (B) This subdivision shall not prevent an insurer which
16 requires membership in a specified voluntary, nonprofit
17 organization, which was in existence prior to November 8, 1988,
18 as a condition precedent to applying for insurance issued to or
19 through those membership groups, including franchise groups,
20 from requiring such membership as a condition to applying for the
21 coverage offered to members of the group, provided that it or an
22 affiliate also offers and sells coverage to those who are not
23 members of those membership groups.

24 (C) However, all of the following conditions shall be
25 applicable to the insurance authorized by subparagraphs (A) and
26 (B):

27 (i) Membership, if conditioned, is conditioned only on timely
28 payment of membership dues and other bona fide criteria not based
29 upon driving record or insurance, provided that membership in a
30 motor club may not be based on residence in any area within the
31 state.

32 (ii) Membership dues are paid solely for and in consideration
33 of the membership and membership benefits and bear a reasonable
34 relationship to the benefits provided. The amount of the dues shall
35 not depend on whether the member purchases insurance offered by
36 the membership organization. None of those membership dues or
37 any portion thereof shall be transferred by the membership
38 organization to the insurer, or any affiliate of the insurer,
39 attorney-in-fact, subsidiary, or holding company thereof, provided

1 that this provision shall not prevent any bona fide transaction
2 between the membership organization and those entities.

3 (iii) Membership provides bona fide services or benefits in
4 addition to the right to apply for insurance. Those services shall be
5 reasonably available to all members within each class of
6 membership.

7 Any insurer that violates clause (i), (ii), or (iii) shall be subject
8 to the penalties set forth in Section 1861.14.

9 (c) The absence of prior automobile insurance coverage, in and
10 of itself, shall not be a criterion for determining eligibility for a
11 Good Driver Discount policy, or generally for automobile rates,
12 premiums, or insurability. *However, notwithstanding subdivision*
13 *(a), an insurer may use persistency of automobile insurance*
14 *coverage with the insurer, an affiliate, or another insurer as an*
15 *optional rating factor. The Legislature hereby finds and declares*
16 *that it furthers the purpose of Proposition 103 to encourage*
17 *competition among carriers so that coverage overall will be priced*
18 *competitively. The Legislature further finds and declares that*
19 *competition is furthered when insureds are able to claim a discount*
20 *for regular purchases of insurance from any carrier offering this*
21 *discount irrespective of whether or not the insured has previously*
22 *purchased from a given carrier offering the discount. Persistency*
23 *of coverage may be demonstrated by coverage under the low-cost*
24 *automobile insurance program pursuant to Article 5.5*
25 *(commencing with Section 11629.7) and Article 5.6 (commencing*
26 *with Section 11629.9) of Chapter 1 of Part 3 of Division 2.*
27 *Persistency shall be deemed to exist even if there is a lapse of*
28 *coverage of up to two years due to an insured's absence from the*
29 *state while in military service, and up to 90 days in the last five*
30 *years for any other reason.*

31 (d) An insurer may refuse to sell a Good Driver Discount policy
32 insuring a motorcycle unless all named insureds have been
33 licensed to drive a motorcycle for the previous three years.

34 (e) This section shall become operative on November 8, 1989.
35 The commissioner shall adopt regulations implementing this
36 section and insurers may submit applications pursuant to this
37 article which comply with those regulations prior to that date,
38 provided that no such application shall be approved prior to that
39 date.

1 *SEC. 2. This act is an urgency statute necessary for the*
2 *immediate preservation of the public peace, health, or safety*
3 *within the meaning of Article IV of the Constitution and shall go*
4 *into immediate effect. The facts constituting the necessity are:*

5 *Because making a ratings discount portable will expand*
6 *consumer access to insurance and consumer choice, and will result*
7 *in increased competition in the marketplace, it is necessary that*
8 *this act take effect immediately.*

9 ~~amended to read:~~

10 ~~1215.9. (a) Whenever it appears to the commissioner that any~~
11 ~~insurer or any director, officer, employee, or agent thereof has~~
12 ~~committed or is about to commit a violation of this article or of any~~
13 ~~rule, regulation, or order issued by the commissioner hereunder,~~
14 ~~the commissioner may apply to the superior court for the county~~
15 ~~in which the principal office of the insurer is located, or if the~~
16 ~~insurer has no principal office in this state, then to the Superior~~
17 ~~Court for the County of Los Angeles, for the City and County of~~
18 ~~San Francisco, or for the County of Sacramento, for an order~~
19 ~~enjoining the insurer or the director, officer, employee, or agent~~
20 ~~thereof from violating or continuing to violate this article or the~~
21 ~~rule, regulation, or order, and for any other equitable relief as the~~
22 ~~nature of the case and the interests of the insurer's policyholders,~~
23 ~~creditors, and shareholders or the public may require.~~

24 ~~(b) No security which is the subject of any agreement or~~
25 ~~arrangement regarding acquisition, or which is acquired or to be~~
26 ~~acquired in contravention of the provisions of this article or of any~~
27 ~~rule, regulation, or order issued by the commissioner hereunder,~~
28 ~~may be voted at any shareholders' meeting, or may be counted for~~
29 ~~quorum purposes, and any action of shareholders requiring the~~
30 ~~vote of an affirmative percentage of shares may be taken as though~~
31 ~~such securities were not issued and outstanding. If an insurer or the~~
32 ~~commissioner has reason to believe that any security of the insurer~~
33 ~~has been or is about to be acquired in contravention of the~~
34 ~~provisions of this article or of any rule, regulation, or order issued~~
35 ~~by the commissioner hereunder, the insurer or the commissioner~~
36 ~~may apply to the Superior Court for the County of Los Angeles or~~
37 ~~for the City and County of San Francisco or to the superior court~~
38 ~~for the county in which the insurer has its principal place of~~
39 ~~business for equitable relief to enjoin the voting of any such~~

- 1 ~~security or to void any vote of such security already cast, at any~~
- 2 ~~meeting of shareholders.~~

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